

IC 14-34-19

Chapter 19. Abandoned Mines

IC 14-34-19-1

Federal money

Sec. 1. (a) Money received by the department from the federal government for use in the restoration of abandoned mine land under this chapter shall be deposited in separate dedicated funds administered by the department. The funds may only be used to effect the restoration of abandoned mine land under this chapter.

(b) Federal money received is considered appropriated and allotted at the time of grant approval for specific projects included in the approved grant.

As added by P.L.1-1995, SEC.27. Amended by P.L.165-2011, SEC.26.

IC 14-34-19-1.3

Acid mine drainage abatement and treatment fund

Sec. 1.3. (a) As used in this section, "fund" refers to the acid mine drainage abatement and treatment fund established by subsection (b).

(b) The acid mine drainage abatement and treatment fund is established for the purpose of the abatement of the causes and the treatment of the effects of acid mine drainage. The department shall administer the fund.

(c) The fund consists of the following:

(1) Accrued interest and other investment earnings of the fund.

(2) Gifts, grants, donations, or appropriations from any source.

(d) Money in the fund does not revert to the state general fund at the end of a fiscal year.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

As added by P.L.165-2011, SEC.27.

IC 14-34-19-1.5

Reclamation set-aside fund

Sec. 1.5. (a) As used in this section, "fund" refers to the reclamation set-aside fund established by subsection (b).

(b) The reclamation set-aside fund is established for the following purposes:

(1) The protection of public health and property from the extreme danger of the adverse effects of coal mining practices.

(2) The assurance that safety and general welfare are not affected by the extreme danger of adverse effects of coal mining practices.

(3) The protection of public health from the adverse effects of coal mining practices.

(4) The assurance that safety and general welfare are not affected by the adverse effects of coal mining practices.

- (5) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreation resources, and agricultural productivity.
 - (c) The department shall administer the fund.
 - (d) The fund consists of the following:
 - (1) Accrued interest and other investment earnings of the fund.
 - (2) Gifts, grants, donations, or appropriations from any source.
 - (e) Money in the fund does not revert to the state general fund at the end of a state fiscal year.
 - (f) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.
- As added by P.L.165-2011, SEC.28. Amended by P.L.6-2012, SEC.105.*

IC 14-34-19-2

Lands and water eligible for reclamation or drainage abatement expenditures

Sec. 2. (a) Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those:

- (1) that were:
 - (A) mined for coal; or
 - (B) affected by the mining, wastebanks, coal processing, or other coal mining processes;
 - (2) that were:
 - (A) abandoned; or
 - (B) left in an inadequate reclamation status; before August 3, 1977; and
 - (3) for which there is not a continuing reclamation responsibility under state or federal law.
- (b) Surface coal mining operations on lands eligible for remining do not affect the eligibility of the lands for reclamation and restoration under this chapter after the release of the bond or deposit for the operation under IC 14-34-6.
- As added by P.L.1-1995, SEC.27. Amended by P.L.179-1995, SEC.9.*

IC 14-34-19-3

Priorities for expenditures

Sec. 3. (a) Expenditure of money from the fund created by section 1 of this chapter on lands and water eligible under section 2 of this chapter must reflect the following priorities in the order stated:

- (1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.
- (2) The protection of public health and safety from adverse effects of coal mining practices.

(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreation resources, and agricultural productivity.

(b) Not more than thirty percent (30%) of money from funds under section 1 of this chapter that is received from the federal government on an annual basis may be expended on water supply restoration projects.

As added by P.L.1-1995, SEC.27. Amended by P.L.165-2011, SEC.29.

IC 14-34-19-4

Director entering property to abate adverse effects of coal mining practices

Sec. 4. (a) This section applies if the director makes a finding of fact that:

(1) land or water resources have been adversely affected by past coal mining practices;

(2) the adverse effects of past coal mining practices are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

(A) are not known or readily available; or

(B) will not give permission for:

(i) the United States;

(ii) the state;

(iii) a political subdivision; or

(iv) an agent, an employee, or a contractor of the United States, the state, or the political subdivision;

to enter upon the property to restore, reclaim, rebate, control, or prevent the adverse effects of past coal mining practices.

(b) The director may, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising one (1) time in a newspaper of general circulation in the county in which the land lies, do the following:

(1) Enter upon the property adversely affected by past coal mining practices and any other property to have access to that property.

(2) Do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) Entry under this section is:

(1) an exercise of the police power for the protection of public health and safety; and

(2) not an act of:

(A) condemnation of property; or

(B) trespass.

(d) The money expended for the work and the benefits accruing to the premises entered under this section:

(1) is chargeable against the land; and

(2) mitigates or offsets:

(A) a claim in; or

(B) an action brought by an owner of;

an interest in the premises for alleged damages by virtue of the entry.

However, this subsection does not create new rights of action or eliminate existing immunities.

As added by P.L.1-1995, SEC.27. Amended by P.L.165-2011, SEC.30.

IC 14-34-19-5

Director entering property to conduct studies or exploratory work

Sec. 5. (a) The director may enter upon any property for the purpose of conducting studies or exploratory work to determine the following:

(1) The existence of adverse effects of past coal mining practices.

(2) The feasibility of restoration, reclamation, abatement, control, or prevention of the adverse effects.

(b) Entry under this section is:

(1) an exercise of the police power for the protection of public health, safety, and general welfare; and

(2) not an act of:

(A) condemnation of property; or

(B) trespass.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-6

Acquisition of adversely affected land for reclamation

Sec. 6. The director may, by purchase, donation, or condemnation, acquire land that is adversely affected by past coal mining practices if the director determines that acquisition of the land is necessary to successful reclamation and that:

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will:

(A) serve recreation, historic, conservation, and reclamation purposes; or

(B) provide open space benefits and permanent facilities such as a treatment plant;

or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(2) acquisition of coal refuse disposal sites and all coal refuse on the sites will serve the purpose of this chapter or that public ownership is desirable to meet emergency situations and

prevent recurrences of the adverse effects of past coal mining practices.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-7

Title and price of land purchased

Sec. 7. Title to all land acquired by the director under this chapter is in the name of the state. The price paid for the land must reflect the market value of the land as adversely affected by past coal mining practices.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-8

Public sale of land

Sec. 8. If land acquired by the director under this chapter is suitable for industrial, commercial, residential, or recreational development, the director may sell the land:

- (1) by public sale under a system of competitive bidding at not less than fair market value; and
- (2) under other conditions that are adopted by the commission by rule to ensure that the land is put to proper use consistent with local and state land use plans.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-9

Public hearing

Sec. 9. The director shall, when requested after appropriate public notice, hold a public hearing in accordance with IC 4-21.5 in the county in which the land acquired by the director under this chapter is located. The hearing shall be held at a time that affords local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-10

Transfer of land to state agency

Sec. 10. After restoration of the acquired land, the director may, with the approval of the governor, transfer jurisdiction of the land or a part of the land to a state agency that can best use the land for public purposes.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-11

Sale of land with governor's approval

Sec. 11. (a) If retention of the land by the director or other state agency is impractical, the director may, with the approval of the governor, do either of the following:

- (1) Sell the land to political subdivisions of the state at the cost

of acquisition and restoration.

(2) Dispose of the land by public sale to the highest bidder for not less than the fair market value as determined by two (2) private appraisers appointed by the director.

(b) The proceeds of a sale shall be deposited in the fund created under section 1 of this chapter.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-12

Liens

Sec. 12. (a) Within six (6) months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the director:

(1) shall itemize the money expended; and

(2) may, subject to subsection (b), file a statement with the county recorder in the county in which the land lies together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the money expended results in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) A lien may not be filed against the property of a person under subsection (a) who did not:

(1) consent to;

(2) participate in; or

(3) exercise control over;

the mining operation that necessitated the reclamation performed under this chapter.

(c) The landowner may petition within sixty (60) days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and shall be recorded with the statement filed under subsection (a). A party aggrieved by the decision may appeal as provided by law.

(d) The director shall record the lien with the county recorder in the county in which the land is located. The statement:

(1) constitutes a lien upon the land as of the date of the expenditure of the money; and

(2) has priority as a lien second only to the lien of real estate taxes imposed upon the land.

As added by P.L.1-1995, SEC.27. Amended by P.L.165-2011, SEC.31.

IC 14-34-19-13

Powers of director

Sec. 13. (a) The director may do the following:

- (1) Fill voids and open abandoned tunnels, shafts, and entryways resulting from a previous mining operation that constitutes a hazard to the public health or safety.
- (2) Reclaim surface impacts of underground or surface mines that the director determines could:
 - (A) endanger life and property;
 - (B) constitute a hazard to the public health and safety; or
 - (C) degrade the environment.

(b) If mine waste piles are being reworked for conservation purposes, the incremental cost of disposing of the wastes from the operations by filling voids and sealing tunnels is eligible for funding under this chapter if the disposal of the wastes meets the purposes of this section.

(c) The director may, by:

- (1) purchase;
- (2) donation;
- (3) easement; or
- (4) otherwise;

acquire the interest in land that the director determines necessary to carry out this section.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-14**Plants for controlling and treating water pollution from mine drainage**

Sec. 14. The director may construct and operate plants for the control and treatment of water pollution resulting from mine drainage. The extent of the control and treatment is dependent upon the ultimate use of the water.

As added by P.L.1-1995, SEC.27.

IC 14-34-19-15**Mine land reclamation projects; requirements**

Sec. 15. (a) This section applies to the following:

- (1) When the department is considering a mine land reclamation project under IC 14-34-1-2 or 312 IAC 25-2-3 that is:
 - (A) at least fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds; or
 - (B) less than fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds if the construction is an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and this chapter.

Government financing guarantees, insurance, loans, funds

obtained through industrial revenue bonds or their equivalent, or in-kind payments are not considered funds appropriated by a governmental entity under this subdivision.

(2) When the level of funding for the construction will be less than fifty percent (50%) of the total cost because of planned coal extraction.

(b) The department must make the following determinations:

(1) The likelihood that coal will be mined under a surface coal mining and reclamation operations permit issued under this article. The determination must consider available information, including the following:

(A) Coal reserves from existing mine maps or other sources.

(B) Existing environmental conditions.

(C) All prior mining activity on or adjacent to the site.

(D) Current and historical coal production in the area.

(E) Any known or anticipated interest in mining the site.

(2) The likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) The likelihood that reclamation activities at the site might adversely affect nearby mining activities.

(c) If a decision is made to proceed with the reclamation project, the department must make the following determinations:

(1) The limits on any coal refuse, coal waste, or other coal deposits that can be extracted under the exemption under IC 14-34-1-2 and 312 IAC 25-2-3.

(2) The delineation of the boundaries of the abandoned mine lands reclamation project.

(d) The following documentation must be included in the abandoned mine lands reclamation case file:

(1) Determinations made under subsections (b) and (c).

(2) The information taken into account in making the determinations.

(3) The names of the persons making the determinations.

(e) The department must do the following for each project:

(1) Characterize the site regarding mine drainage, active slide and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance.

(2) Ensure that the reclamation project is conducted according to provisions of 30 CFR Subchapter R, this chapter, and applicable procurement provisions to ensure the timely progress and completion of the project.

(3) Develop specific site reclamation requirements, including, when appropriate, performance bonds that comply with procurement procedures.

(4) Require the contractor conducting the reclamation to provide, before reclamation begins, applicable documents that authorize the extraction of coal and any payment of royalties.

(f) The contractor must obtain a surface coal mining and reclamation operations permit under this article for any coal

extracted beyond the limits of the incidental coal specified in subsection (c)(1).

As added by P.L.71-2004, SEC.31.